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EXAMINER
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PHAM, LINH K

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ERIC EDWARDS, KURT JONACH,  
and JOHN TREE

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Appeal 2010-005991  
Application 09/637,120  
Technology Center 2100

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Before MAHSHID D. SAADAT, ROBERT E. NAPPI, and  
MICHAEL R. ZECHER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 3, 7 through 11, 13, 23 through 27, 29 through 35, 38, 40, and 42 through 51.

We reverse.

## INVENTION

The invention is directed to an imaging service where people can upload photos from a local device, such as a camera, or from a remote server with a database of images. The service charges different payment amounts depending upon the source of the images. *See* pages 3 through 6 and 10 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

1. A method for displaying images comprising:
  - specifying at least one source of a plurality of sources from which to access a plurality of presentation images to be displayed in a visual presentation, the plurality of sources including a remote source and a local source;
  - accessing a plurality of presentation images from the one or more specified sources by a server, one or more of the plurality of presentation images having inconsistent presentation attributes;
  - arranging the plurality of presentation images by the server according to at least one characteristic provided by a client;
  - organizing the plurality of presentation images in the visual presentation by the server, wherein organizing includes automatically modifying the inconsistent presentation attributes of the one or more of the plurality of presentation images to have consistent presentation attributes, wherein modifying the inconsistent presentation attributes of the one or more of the plurality of presentation images includes modifying exposure of the one or more of the plurality of presentation images to be consistent;

requesting and receiving compensation from the client before the visual presentation is sent to the client, an amount of compensation varies depending on which sources of the plurality of sources are accessed to retrieve the plurality of presentation images, where the remote source is more expensive to access than the local source; and

transmitting the visual presentation from the server to the client.

#### REFERENCES

Yang	US 6,301,586 B1	Oct. 9, 2001
Lin	US 6,369,835 B1	Apr. 9, 2002
Shiimori	US 6,567,983 B1	May 20, 2003
Stewart	US 6,571,221 B1	May 27, 2003
Higurashi	US 2003/0133019 A1	July 17, 2003
Vasudevan	US 6,892,351 B2	May 10, 2005

#### REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 3, 7 through 11, 13, 23, 25 through 27, 29 through 35, 42, 44, and 47 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Shiimori, Higurashi, and Stewart. Answer 3-13<sup>1</sup>.

The Examiner has rejected claims 24, 43, and 46 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Shiimori, Higurashi, Stewart and Lin. Answer 13-14.

The Examiner has rejected claims 38 and 40 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Lin, Higurashi, and Stewart. Answer 14-17.

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<sup>1</sup> Throughout this opinion we refer to the Examiner's Answer mailed on December 29, 2009.

The Examiner has rejected claims 45 and 48 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Shiimori, Higurashi, Stewart and Vasudevan. Answer 17.

The Examiner has rejected claims 49 and 50 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Lin, Higurashi, Shiimori and Stewart. Answer 17-20.

The Examiner has rejected claim 51 under 35 U.S.C. § 103(a) as unpatentable over Yang in view of Lin, Higurashi, Shiimori, Stewart and Vasudevan. Answer 20-21.

## ISSUES

Appellants argue on pages 13 through 16 of the Brief<sup>2</sup> that the Examiner's rejections of independent claims 1, 23, 38, and 49 are in error. Appellants' arguments present us with the following issue: did the Examiner err in finding the combination of the references teaches the limitations directed to an amount of compensation varying depending upon which source is accessed to retrieve the plurality of presentation images ?<sup>3,4</sup>

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<sup>2</sup> Throughout this opinion we refer to Appellants' Appeal Brief dated September 25, 2009.

<sup>3</sup> We note Appellants' arguments present additional issues but we do not reach them as this issue is dispositive of the Appeal.

<sup>4</sup> We recognize that the Examiner does not rely upon the same combination of references to reject all of the independent claims. However, as the Examiner relies upon the same reference (Stewart) to teach this limitation in each of the rejections, this issue is applicable to the rejections of all of the independent claims. *See* Answer 5, 16, and 20.

### ANALYSIS

We have reviewed Appellants' arguments in the Brief, the Examiner's rejection and the Examiner's response to the Appellants' arguments. We concur with Appellants' conclusion that the Examiner erred in finding the combination of the references teaches the limitations directed to an amount of compensation varying depending upon which source is accessed to retrieve the plurality of presentation images, as recited in independent claim 1, and similarly recited in independent claims 23, 38, and 49. The Examiner responds to Appellants' arguments by finding that Stewart teaches this feature, citing the disclosure in col. 3, ll. 30-55. Answer 21-22. We disagree with the Examiner's finding. The cited portion of Stewart merely teaches that the fee to access a network is dependent upon the location of the user when accessing the network, the cited evidence does not identify that a fee is associated with and varies based upon the location of the source of the information as claimed. Accordingly, Appellants' arguments have persuaded us of error in the Examiner's rejections of independent claims 1, 23, 38, and 49, and the claims which depend thereupon. Accordingly, we will not sustain the Examiner's rejections of claims 1 through 3, 7 through 11, 13, 23 through 27, 29 through 35, 38, 40, and 42 through 51 under 35 U.S.C. § 103(a).

### DECISION

The decision of the Examiner to reject claims 1 through 3, 7 through 11, 13, 23 through 27, 29 through 35, 38, 40, and 42 through 51 is reversed.

REVERSED

Appeal 2010-005991  
Application 09/637,120

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